

## Department of the Navy, DoD

## § 724.808

in addition to the guidance in paragraphs above:

(A) The NDRB may reject the applicant's position by explaining why it disagrees with the principles set forth in the applicant's issue (including principles derived from cases cited by the applicant).

(B) The NDRB may reject the applicant's position by explaining why the principles set forth in the applicant's issue (including principles derived from cases cited by the applicant) are not relevant to the applicant's case.

(C) The NDRB may reject an applicant's position by explaining why the applicant's issue is not a matter upon which the NDRB grants a change in discharge as a matter of equity. When the applicant indicates that the issue is to be considered in conjunction with other specified issues, the explanation will address all such specified issues.

(D) The NDRB may reject the applicant's position on the grounds that other specified factors in the case preclude granting relief, regardless of whether the NDRB agrees with the applicant's position.

(E) If the applicant takes the position that the discharge should be changed as a matter of equity because of an alleged error in a record associated with the discharge, and the record has not been corrected by the organization with primary responsibility for corrective action, the NDRB may respond that it will presume the validity of the record in the absence of such corrective action. However, the NDRB will consider whether it should exercise its equitable powers to change the discharge on the basis of the alleged error. If it declines to do so, it shall explain why the applicant's position did not provide a sufficient basis for the change in the discharge requested by the applicant.

(iv) When NDRB concludes that aggravating factors outweigh mitigating factors, the NDRB must set forth reasons such as the seriousness of the offense, specific circumstances surrounding the offense, number of offenses, lack of mitigating circumstances, or similar factors. The NDRB is not required however, to explain why it relied on any such factors unless the applicability or weight of

such a factor is expressly raised as an issue by the applicant.

(v) If the applicant has not submitted any issues and the NDRB has not otherwise relied upon an issue of equity for a change in discharge, the decisional document shall contain a statement to that effect, and shall note that the major factors upon which the discharge was based are set forth in the service record portion of the decisional document.

### § 724.807 Record of NDRB proceedings.

(a) When the proceedings in any review have been concluded, a record thereof will be prepared. Records may include written records, electromagnetic records, audio and/or videotape recordings, or a combination.

(b) At a minimum, the record will include the following:

- (1) The application for review;
- (2) A record of the testimony in either verbatim, summarized, or recorded form at the option of the NDRB;
- (3) Documentary evidence or copies, other than the military service record considered by the NDRB;
- (4) Briefs and arguments submitted by or on behalf of the applicant;
- (5) Advisory opinions considered by the NDRB, if any;
- (6) The findings, conclusions, and reasons developed by the NDRB;
- (7) Notification of the NDRB's decision to the cognizant custodian of the applicant's records, or reference to the notification document;
- (8) A copy of the decisional document.

### § 724.808 Issuance of decisions following discharge review.

The applicant and counsel or representative, if any, shall be provided with a copy of the decisional document and of any further action in review. Final notification of decisions shall be issued to the applicant with a copy to the counsel or representative, if any, and to the service manager concerned.

(a) Notification to applicants, with copies to counsel or representatives, shall normally be made through the U.S. Postal Service. Such notification shall consist of a notification of decision, together with a copy of the decisional document.

(b) Notification to the service manager shall be for the purpose of appropriate action and inclusion of review matter in personnel records. Such notification shall bear appropriate certification of completeness and accuracy.

(c) Actions on review by superior authority, when occurring, shall be provided to the applicant and counsel or representative in the same manner as to the notification of the review decision.

**§ 724.809 Final disposition of the record of proceedings.**

The original decisional document and all appendices thereto, shall in all cases be incorporated in the military service record of the applicant and the service record shall be returned to the custody of the appropriate record holding facility. If a portion of the original record of proceedings cannot be stored with the service record, the service record shall contain a notation as to the place where the record is stored. Other copies including any electromagnetic records, audio and/or videotape recordings or any combination thereof shall be filed in the NDRB case folder and disposed of in accordance with appropriate naval regulations.

**§ 724.810 Availability of Naval Discharge Review Board documents for public inspection and copying.**

(a) A copy of the decisional document prepared in accordance with subpart H of this enclosure shall be made available for public inspection and copying promptly after a notice of final decision is sent to the applicant.

(b) To prevent a clearly unwarranted invasion of personal privacy, identifying details of the applicant and other persons will be deleted from documents made available for public inspection and copying.

(1) Names, addresses, social security numbers, and military service numbers must be deleted. Written justification shall be made for all other deletions and shall be available for public inspection.

(2) The NDRB shall ensure that there is a means for relating a decisional document number to the name of the applicant to permit retrieval of the ap-

plicant's records when required in processing a complaint.

(c) Any other privileged or classified material contained in or appended to any documents required by this Manual to be furnished the applicant and counsel or representative or made available for public inspection and copying may be deleted only if a written statement on the basis for the deletions is provided the applicant and counsel or representative and made available for public inspection. It is not intended that the statement be so detailed as to reveal the nature of the withheld material.

(d) NDRB documents made available for public inspection and copying shall be located in the Armed Forces Discharge Review/Correction Board Reading Room. The documents shall be indexed in a usable and concise form so as to enable the public, and those who represent applicants before the NDRB, to isolate from all these decisions that are indexed, those cases that may be similar to an applicant's case and that indicate the circumstances under or reasons for (or both) which the NDRB or the Secretary concerned granted or denied relief.

(1) The reading file index shall include, in addition to any other item determined by the NDRB, the case number, the date, character of, reason and authority for the discharge. It shall also include the decisions of the NDRB and reviewing authority, if any, and the issues addressed in the statement of findings, conclusions, and reasons.

(2) The index shall be maintained at selected permanent locations throughout the United States. This ensures reasonable availability to applicants at least 30 days before a traveling panel review. A list of these locations shall be published in the FEDERAL REGISTER by the Department of the Army. The index shall also be made available at sites selected for traveling panels or hearing examinations for such periods as the NDRB is present and in operation. An applicant who has requested a traveling panel review shall be advised, in the notice of such review, of the permanent index locations.

(3) The Armed Forces Discharge Review/Corrections Board Reading Room shall publish indexes quarterly for all